



0000108578

ORIGINAL

3040

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN

Arizona Corporation Commission

DOCKETED

2002 APR -9 P 3:34

JIM IRVIN

COMMISSIONER

APR 09 2002

AT CORP COMMISSION
DOCUMENT CONTROL

MARC SPITZER

COMMISSIONER

DOCKETED BY

mcc

IN THE MATTER OF QWEST
CORPORATION'S COMPLIANCE
WITH SECTION 252(e) OF THE
TELECOMMUNICATIONS ACT OF
1996

DOCKET NO. RT-00000F-02-0271

**REQUEST OF THE COMMISSION STAFF
FOR A PROCEDURAL ORDER****I. INTRODUCTION**

Because of issues recently arising concerning Qwest Corporation's ("Qwest") compliance with Section 252(e) of the Telecommunications Act of 1996 ("1996 Act"), the Arizona Corporation Commission Staff ("ACC Staff") respectfully requests that the Commission issue a Procedural Order consistent with the discussion below to review these issues.

II. BACKGROUND

On February 14, 2002, the Minnesota Department of Commerce filed a Complaint with the Minnesota Public Utilities Commission ("MPUC") against Qwest alleging that Qwest had entered into agreements with telecommunications carriers but had not filed those agreements with the MPUC for approval as required under Section 252(e) of the 1996 Act. Qwest filed an Answer to the Complaint alleging, in part, that the agreements were not "interconnection agreements", and therefore, Qwest had no obligation under Section 252(e) of the 1996 Act to file the agreements with the MPUC for approval.

Upon learning of the Minnesota complaint, the ACC Staff sent a letter to Qwest which requested the Company to file any similar agreements, or portions thereof, between Qwest and Arizona carriers with the Commission which had not been filed with the ACC for approval under Section 252(e) of the 1996 Act.¹

¹ See March 4, 2002 Letter from Ernest Johnson, Arizona Corporation Commission Utilities Division Director, to Teresa Wahlert, Vice-President-Arizona and Regional Vice-President of Qwest.

1 On March 11, 2002, Qwest stated in a letter² to the Commission that it believed it had
2 complied with Section 252(e) of the 1996 Act and that it had exercised good faith in deciding
3 when a particular contract arrangement with a CLEC requires PUC filing and prior approval, and
4 when it does not. Qwest also stated that it believed that the judgments that it made in this area
5 complied with a fair and proper reading of the Act. Attached to Qwest's letter was a copy of its
6 Answer to the Minnesota Department of Commerce Complaint denying the allegations. Along
7 with the letter, Qwest also included copies of the agreements identified by the Minnesota
8 Department of Commerce that involved CLECs operating in Arizona. Qwest stated that the
9 agreements fall into the following two categories: 1) contracts that are no longer in effect and
10 are matters of "historical" interest, and, 2) contracts that are effective which Qwest submitted as
11 "conditional" interconnection agreements which the Company stated could be approved under
12 Section 252(e) if a determination was made that this was required.

13 Qwest further stated that the Minnesota Department of Commerce Complaint presented
14 an important legal issue: where is the line drawn between (i) key terms and conditions of
15 interconnection that must be filed for prior PUC approval under Section 252 of the Federal
16 Telecommunications Act of 1996, and (ii) other ILEC-CLEC contract provisions that do not fall
17 within these mandatory filing requirements?

18 In Qwest's response to Director Johnson's letter³, the Company stated that it had filed all
19 agreements that it believed required approval under the 1996 Act. On March 19, 2002, Qwest
20 submitted copies of additional agreements in response to Director Johnson's letter. Qwest
21 requested confidential treatment of the agreements and subsequently claimed that the
22 agreements fell into one of the following four categories: 1) business-to-business administrative
23 procedures at a granular level; 2) agreements settling historical disputes; 3) matters falling
24 outside the scope of Sections 251 and 252; and 4) provisions which merely indicate that Qwest
25 will comply with future orders of pending proceedings.⁴

26 ² See March 11, 2002 Letter from Teresa Wahlert, Qwest Vice-President-Arizona to Arizona Corporation
27 Commission Chairman William A. Mundell.

28 ³ See March 15, 2002 Letter from Teresa Wahlert, Qwest Vice-President-Arizona to Arizona Corporation
Commission Utilities Division Director Ernest Johnson.

⁴ See Qwest March 18, 2002, Opposition to AT&T Communications of the Mountain States, Inc. and TCG Phoenix
Motion to Require Qwest to Supplement the Record in Docket No. T-00000A-97-0238.

1 **III. DISCUSSION**

2 Given the importance of the issues raised by the Minnesota Department of Commerce
3 Complaint, and Qwest's subsequent responses to ACC inquiries regarding similar agreements
4 which had not been filed for approval in Arizona, Staff believes that a process should be
5 established for review of the agreements submitted by Qwest. This review should examine
6 whether those agreements should have been filed for approval with the ACC pursuant to Section
7 252(e) of the 1996 Act, and if so, any appropriate remedial action which the ACC might
8 consider.

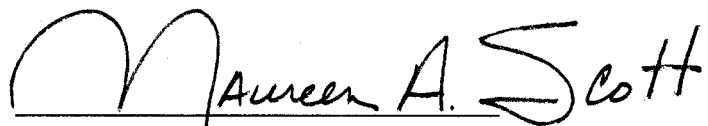
9 Staff would propose the following schedule:

10 April 19, 2002	Parties to agree upon and submit a confidentiality agreement or proposed protective order
11 April 30, 2002	Qwest to submit all agreements into record and comment regarding its obligations under 252(e) with respect to each agreement
12 May 10, 2002	Interested Parties file Comment on Qwest's submissions
13 May 17, 2002	Qwest Reply to the Parties' Comments
14 May 31, 2002	Staff Report and Recommendation to the Commission

15
16 **IV. CONCLUSION**

17 In summary, Staff believes that the issues raised herein are significant and therefore, Staff
18 has proposed a very aggressive timeline so that this issue can be examined in an expedited
19 fashion.

20 RESPECTFULLY submitted this 9th day of April, 2002.

21
22
23 

24 Christopher C. Kempley, Chief Counsel
25 Maureen A. Scott, Attorney
26 Legal Division
27 Arizona Corporation Commission
28 1200 West Washington Street
Phoenix, Arizona 85007
Telephone: (602) 542-6022
Facsimile: (602) 542-4870
e-mail: maureenscott@cc.state.az.us

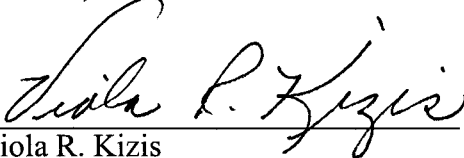
1 The original and ten (10) copies of the foregoing
2 were filed this 9th day of April, 2002, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 Copies of the foregoing were
8 mailed/hand-delivered this
9 9th day of April, 2002, to:

10 Timothy Berg
11 Fennemore Craig, P.C.
12 3003 North Central Avenue, Suite 2600
13 Phoenix, AZ 85012

14 Teresa Wahlert, Vice President-Arizona
15 Maureen Arnold
16 Qwest Communications, Inc.
17 3033 N. Third Street, Room 1010
18 Phoenix, Arizona 85012

19 
20 Viola R. Kizis
21 Secretary to Maureen A. Scott
22
23
24
25
26
27
28